

**WEST VALLEY CITY
BOARD OF ADJUSTMENT
MINUTES**

October 4, 2017

The meeting was called to order at 6:04 p.m. by Necia Christensen at 3600 Constitution Boulevard, West Valley City, Utah.

WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS

Necia Christensen, Sandy Naegle, Scott Spendlove, and William Whetstone

WEST VALLEY CITY PLANNING DIVISION STAFF

Jody Knapp, Steve Lehman, and Brenda Turnblom

WEST VALLEY CITY LEGAL DEPARTMENT

Brandon Hill

AUDIENCE

Six people were in the audience.

B-5-2017
Chase Non-Conforming Use Determination
3396 West 3100 South
R-1-8 Zone

REQUEST:

Roger Chase has filed an application with the West Valley City Board of Adjustment requesting a non-conforming use determination in order to continue keeping livestock on the property noted above.

WEST VALLEY CITY GENERAL PLAN recommends low density residential land uses.

BACKGROUND:

- The subject property is located at 3396 West 3100 South. It is also known as Parcel Number 15-29-276-036. The property is 2.26 acres in size and is zoned R-1-8. The property is bordered by R-1-8 to the west and south, R-1-6 to the north, and Agricultural to the east.
 - 1.
- This application is being presented to the Board of Adjustment at the request of the property owner. The applicant recently purchased the subject property and wants to ensure that animal rights are available to the property as the previous owners had animals on the property when they sold it to the applicant.
- The zoning history for the subject property is as follows:
 - 1965 – Unzoned
 - 1970 – R-1-43 (Allowed for keeping of animals and fowl for family food production and not more than 4 horses for private use)
 - 1980 – R-2-8
 - 1985- Present – R-1-8
- To help verify the existence of farm animals, the applicant has submitted documentation from individuals who lived and worked on the property stating that animals have been kept on this property since 1965. These letters have been attached to the analysis for your review.
- The aerial photographs included in the power point shows that this property is of sufficient size and appearance to reasonably assume that the keeping of animals was part of the land use on this larger parcel which was part of the Montrone farming community.
- In this case, there are a number of outbuildings on this property which is also an indication

that agricultural and livestock uses were likely present on the property.

- The applicant must also verify the number or intensity of animals that have historically been on the property. With a 2.26 acre parcel, 452 animal points would be permitted in the Agricultural zone. The evidence provided illustrates that from 1965-2001 there were 4 horses, 2 cows and 1 turkey for a total of 241 points. From 2001-2016 there were 6 horses for a total of 240 points.
- The applicant has also provided a written statement and photographs of the property and structures to help the Board in its decision.

ORDINANCE SUMMARY:

- Section 7-12-106 of the West Valley City Land Use Development and Management Act reads:

(3) The Applicant shall have the burden of proving by clear and convincing evidence that the Nonconforming Use, Building, or Structure legally existed before its current land use designation, has been maintained continuously since the time the land use ordinance governing the land changed, and because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the Use of the land.

- The applicant is not requesting an expansion of a non-conforming use. They are requesting a determination that the existing use and animals points historically present on the property, i.e., the keeping of animals, be allowed to continue on this property.

Applicants:

Roger and Becky Chase
3396 West 3100 South
West Valley City, UT 84119

Public Comment: Brandon Hill explained what a nonconforming use is: A nonconforming use is when someone engages in an activity on a property which is legal, but becomes prohibited when zoning laws change. Under state law, an individual may continue a nonconforming use if the following criteria are met: 1. They can prove the activity existed since a time when it was legal. 2. The activity continued from the time it was legal without a 1 year interruption until the present day. 3. The individual must show what the scope of the activity was that merits a nonconforming use. Tonight's application is regarding animal rights. We are looking at what animals were on the property, when they were on the property, and when it was or was not legal for the animals to be on the property.

Brandon Hill stated it is the applicant's burden to prove by clear and convincing evidence that a nonconforming use exists. If no evidence is produced that satisfies the Board, the

application will be denied. If the applicant provides evidence that the nonconforming use meets the criteria, then the application may be granted.

Roger Chase said he wishes to conform to the animal rights that have been on the property in the past. Previous owners have all had animals on the property. The gentleman he purchased the property from owned six horses, and he purchased two of them. He said the City is free to inspect his property.

Necia Christensen referred to a letter from Ralph Montrone who lived on the property from 1965-2001. Mr. Montrone states in the letter that he owned 4 horses, two cows, two dogs, and a turkey. One criteria for approving nonconforming use is proving that animal ownership was continuous. The word regularly is used in the letter. She questioned if Mr. Montrone continuously had animals on his property. Roger Chase said the number of animals Mr. Montrone refers to in his letter is average. He explained that animals come and go when animals are raised for food. There was a four-horse stall and hay barns on the property that indicate continual animal use. Roger Chase said there were six horses on the property when he purchased it. He purchased two horses from the previous owner, Mr. Beams.

Roger Chases's attorney, Jonathan Rudd, Rudd Firm, PC, 201 South Main, Suite 275, Salt Lake City, stated via speaker phone that each of the declarants listed that animal ownership was regular. Aerial photos of animal structures show that animals were on the property. He remarked that if animals were not on the property, the animal structures would have been removed.

William Whetstone asked what animals are on the property today. Roger Chase said he has five horses, one cow, some goats and chickens. He is working on getting rid of some of the animals. He is waiting to see the result of this meeting.

Ken Thorup, 3049 Thorup Circle,,presented a second letter from Ralph Montrone proving there were animals on the property under his ownership. Ken Thorup said he has known Ralph Montrone Chase all of his life. He helped Roger chase build his home. Ken Thorup is concerned that Roger Chase doesn't disclose how many animals are actually on his property. Ken Thorup reported that Roger Chase leases the Agricultural property next to his and keeps llamas, sheep, and horses there. Ken Thorup said the dry manure, flies, bugs, and pests bother the 24 surrounding residential properties. West Valley City is a city in motion, moving forward. He feels it is unreasonable to have a ranch in the middle of the City. He asked Board members if they would want this in their backyards.

Luana Thorup, 3049 Thorup Circle, said there is a fence dividing her property from the Chase property. She is amenable with having 4-5 horses being approved on the Chase property, but she is concerned that Roger Chase will add rabbits, llamas, donkeys, and pigs. He has had them there before. Roger Chase's rabbits have eaten the Thorup's garden.

Brandon Hill said the application will not permit other animals. Necia Christensen said

we can only consider cows, horses and a turkey on the property.

Ken Thorup asked Brandon Hill if the City will monitor the number of animals on the property. Brandon Hill said Animal Control has authority to enter the property and respond to complaints to see that the general ordinances are enforced.

Becky Chase said she and her husband have worked hard to clean up the property since they purchased it. They used foggers to kill insects. A large fence keeps the animals contained within the property. There are extra fences to protect the public. Animal control has inspected the property and determined the animals are kept in good condition.

Necia Christen asked if it is the Chases' intent to grow pumpkins as a business. Becky Chase said growing pumpkins was just for fun. Only two large pumpkins were grown for Halloween.

Roger Chase said he removed 25 dumpsters full of manure and debris to clean up the property after he purchased it. He has also repaired the corrals. He got rid of animals after there were complaints. He has improved the property and will continue to improve it.

Having no further comments, Necia Christensen closed the public portion of the meeting.

Scott Spendlove asked Jody Knapp if any residents have opposed this application for the record. Jody Knapp said she received phone calls from two neighbors asking what the meeting was about and who voiced concerns about the smell emanating from the property in the past.

Scott Spendlove asked if animal points will be determined by the acreage of the property or by the historical types and numbers of animals on the property. Brandon Hill said this nonconforming use will not be based on animal points, but by the historical use of the property. If the historical use of the property was four horses, two cows and a turkey, no substitutions of animals will be allowed.

Scott Spendlove confirmed that ordinance violations and safety issues are not the responsibility of the Board of Adjustment. Brandon Hill said he will make Animal Control and Code Enforcement aware of the issues that have taken place on the property and will let them know what the Board's decision is and how it will impact them going forward.

Ken Throup presented a second affidavit from Ralph Montrone indicating that two horses were kept on the property. Necia Christensen noted that this letter is significantly different than the other letter that was submitted by the same person.

Scott Spendlove asked Brandon Hill how to weigh the validity of the two letters. Brandon Hill said all evidence is admissible and presentable. The fact that one document

is notarized and the other is not does not make it more or less credible. The fact that one predates or postdates the other is not necessarily a reflection of credibility, either. Both documents are by the same person, both agree there were horses on the property, and there is a difference in number between the two.

William Whetstone said there are two declarations from Mr. Montrone, one with 2 horses, and one with four horses. He would like to make a motion, but is not sure which declaration to use. Brandon Hill said it is not necessary to choose between the two documents. A motion may be made to either deny or approve the application. He advised that all documents be considered.

Motion: Scott Spendlove moved to approve B-5-2017 based on the letter from Ralph Montrone stating that in 1965 he had four horses, two cows, and a turkey on the property.

William Whetstone seconded the motion.

Discussion: William Whetstone there is no evidence indicating an absence of these animals for over a year. He feels we should grant this nonconforming use. Sandy Naegle said she is also leaning toward the type and number of animals listed for 1965 in Ralph Montrone's letter.

A roll call vote was taken:

Necia Christensen	Yes
Sandy Naegle	Yes
Scott Spendlove	Yes
William Whetstone	Yes

Motion Carries – B-5-2017 Approved – Unanimous

Necia Christensen said the disputes between these two neighbors were not unjustified. The City has a responsibility to protect the surrounding neighbors. This is 2017, what was acceptable years ago when most everyone had animals is not acceptable now when there are residential and agricultural uses together. She urged Roger Chase and Ken Thorup to cooperate to solve problems between neighbors.

B-6-2017

Alires Variance

2581 South Chesterfield Street

A Zone

REQUEST:

Frank and Janice Aliers are requesting a variance from Section 7-11-214(2) of the West Valley City Code which requires that the minimum square footage of finished above-ground habitable floor space without a finished three-quarter basement be 1900 square feet. The applicant is seeking a variance of 500 square feet to build a new single family dwelling with 1400 square feet.

BACKGROUND:

WEST VALLEY CITY GENERAL PLAN recommends low density residential land uses.

- ☐ The subject property is known as Parcel Number 15-23-353-014. This property is known as lot 16 Block 7 Chesterfield Subdivision. The property is zoned A and is void of any residential dwellings, but it does have a detached garage. Although zoned A, the property is only 70 feet in width where the standard width of most A zoned properties in Chesterfield is 90 feet.
- ☐ The applicant has approached staff about the possibility of building a new single family home at this location. However, when staff explained the building requirements, a few concerns were expressed regarding the width and minimum square footage of the dwelling.
- ☐ To assist the Board in understanding the building requirements pertinent to this application, staff would like to provide some background with regards to the variance request outlined in the application:
 - * In 2015, the City Council adopted new housing standards that would regulate construction of new homes within the City. The standard for single family dwellings is 2,000 square feet for a rambler and 3,000 square feet for a two story or multi-story home. In 2016, an exception was added that allowed a new home to be built on a legal lot and/or parcel that was in existence prior to 2015. This exception allowed a single family home to be built at 1,400 square feet for a rambler and 1,600 square feet for a two story or multi-story home. However, the ordinance also stated that if a basement was not constructed, the size would jump to 1,900 square feet and 2,100 square feet respectively. This is due to the fact that if a basement cannot be built, it lessens the ability for storage and/or to accommodate growing families.
- ☐ In regards to the requested variance relating to home size, the applicant would need to build a 1,900 square foot home as they are not planning on putting in a basement. Typically, basements are standard in most single family developments in West Valley City. However that determination is made either by a soils report, or recommendation from the Building Official. It would also be determined if the dwelling was in or near a flood plain.
- ☐ In this case, the owner does not have the option to put in a basement as the location of this lot is in the flood plain. According to FEMA flood maps, the subject property is

located in what is called Zone AH. This zone would not allow a basement to be constructed due to the requirement of the lowest habitable floor needing to be 1-foot above the flood plain.

- ☐ The applicant believes that what they are proposing to build is an improvement in the area. It will be a new home meeting the 1400 square foot requirement and would meet the City's single family design standards. The square footage, even without the basement is substantially larger than a number of homes in this area of Chesterfield. Staff did some research and learned that homes in close proximity to the subject property range in size from 867 to 1654 square feet.
- ☐ Should the Board of Adjustment approve the variance, the applicant will work with staff regarding a new single family building permit.

☐ **ORDINANCE SUMMARY:**

Section 7-11-214(2) requires that the minimum square footage of finished above-ground habitable floor space without a three-quarter basement be 1900 square feet. The applicant is seeking a variance of 500 square feet to build a new single family dwelling without a basement.

The West Valley City Land Use Development and Management Act Section 7-12-107 outlines the standards or conditions for approving a variance. The Board of Adjustment may grant a variance only if:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of the zoning ordinance is observed and substantial justice done.

According to Williams, American Land Planning Law (Volume 5, Criteria for the Validity of Variances, pages 131 and 133 et.seq.) there is a presumption against granting a variance and it can only be granted if each of the standards are met.

In Wells v. Board of Adjustment of Salt Lake City, the Utah Court of Appeals held that a Board's decision to grant a variance would be illegal if the required statutory findings were not made.

Applicants:

Frank and Janice Alires
5280 West Whitehorse Lane A308
West Valley City, Utah 84120

Public Comment: Janice Alires said the main reason for requesting a variance is because she cannot build a basement on her property because it is close to the Jordan River. She feels a 1,400 sqft home would fit perfectly on the lot. A new home will improve the lot and surrounding properties. Frank Alires has seen the negative results of building in a flood plain.

Janice Alires read her answers to the five criteria for granting a variance:

1. The purpose for the City's zoning ordinances are to promote health, safety and welfare of the citizens. The approval of the variance we are requesting will not negatively impact the purpose noted above. The unreasonable hardship is that our lot is 70 feet wide. Other half acres lots in this area have a 90-foot wide property. The bigger issue is that due to the flood plain, we cannot build a basement, so in effect we are facing a hardship not of our own doing.
2. This property is located in a flood plain. Zone AH will not allow basements due to the elevation requirements. There are other areas within the flood plain that can have basements, but we are closer to the Jordan River than most so we can't. The Jordan River is only 125 feet from our property.
3. The substantial property right is that we be allowed to build a new home. We already have a detached garage and we have cleaned up the property and will continue to improve the area with our new home. We are building as big of a home width wise as we can to come as close as we can to meeting the width requirement. We want to place the home in front of the garage so it will be a better look from the street.
4. This area of the City lacks much, if any new housing. We believe building a new home here will comply 100% with what the City wants to see in new housing and architecture. A new house will not be contrary to the general public, but will only improve other property values in the area.
5. The spirit of the zoning ordinance is observed because a new home meeting all other standards of the zoning ordinance will be built. The City is constantly trying to improve its neighborhoods. Chesterfield is an older area that suffers from a lack of maintenance on many properties. This home will help improve the area and if approved we believe substantial justice will be done.

Scott Spendlove asked Steve Lehman what construction methods can be used for building in a flood plain. Steve Lehman said buildings in the City cannot be on stilts, they must

have a concrete foundation. A basement 1' above the flood plain would be unsightly from an aesthetic viewpoint and is not feasible.

Necia Christensen closed the public comment portion of the meeting.

Motion: William Whetstone moved to approve B-6-2017 based on the criteria presented.

Scott Spendlove seconded the motion.

Discussion: Scott Spendlove feels all of the criteria for granting a variance have been met. Sandy Naegle added that the 70' width of the property is another reason the variance should be granted. Necia Christensen agrees that setback requirements on the narrow, 70' wide lot are also a consideration.

A roll call vote was taken:

Necia Christensen	Yes
Sandy Naegle	Yes
Scott Spendlove	Yes
William Whetstone	Yes

Motion Carries – B-6-2017 Approved – Unanimous

There being no further business, the meeting adjourned at 7:31 p.m.

Brenda Turnblom, Administrative Assistant